



United States  
of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 108<sup>th</sup> CONGRESS, SECOND SESSION

Vol. 150

WASHINGTON, MONDAY, SEPTEMBER 13, 2004

No. 108

## Senate

The Senate met at 2 p.m. and was called to order by the President pro tempore (Mr. STEVENS).

### PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Gracious God of all, we have heard glorious things about Your goodness. Let Your glory be over all the Earth. Our hearts make melody to You because of Your exceeding greatness. Thank You for Your faithfulness that endures forever. Today, give us steadfast hearts that we may honor You with our lives.

Be near to our Senators, giving them a powerful awareness of Your presence. Empower them in their labors to heal broken hearts and to bind the wounds of the oppressed. Remind them of the importance of reverential awe, for You take pleasure in those who delight in doing Your will.

We lift to You again our Nation's military, asking that You will use it as an instrument of peace in our world. Lord, grant us wisdom and courage for the living of these days. We pray this in the Name of the Prince of Peace. Amen.

### PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

### SCHEDULE

Mr. FRIST. Mr. President, today we have a period of morning business until

3:30 this afternoon. At 3:30, the Senate will resume consideration of the Homeland Security appropriations bill. It is my understanding that several Members will be here to offer amendments to the legislation; therefore, we hope to make good progress on the bill over the course of the day.

Under the order from Friday, at 5:30 today, the Senate will vote in relation to the Schumer amendment related to HAZMAT trucks. It would be my hope that we would have an additional amendment ready to be voted on immediately after the 5:30 vote. Therefore, Senators should expect two votes beginning at 5:30 today.

I remind my colleagues that we need to finish this legislation either tomorrow evening or early Wednesday morning so that Senators may observe the Rosh Hashanah holiday, which begins Wednesday. Given that time constraint, I encourage Members to show restraint during the amendment process. We will need to have a full day and possibly a late evening tomorrow in order to complete the Homeland Security appropriations bill. I know my colleagues concur that this is an important piece of legislation that we should not, will not, delay.

I also inform Senators we are working on agreements with respect to other appropriations measures, and I will continue to consult with Democratic leadership in an effort to expedite those bills as well.

I thank everyone for their attention as we begin these busy days of the session.

Mr. President, I yield the floor.

### RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

### MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a

period for the transaction of morning business for debate only until 3:30 p.m., with Senators permitted to speak therein for up to 10 minutes each.

Who seeks recognition?

The Senator from Texas is recognized.

### MEDICAL LIABILITY REFORM

Mr. CORNYN. Mr. President, it was 1 year ago today that the voters in my home State of Texas passed proposition 12, a referendum that paves the way for substantive medical liability reform and provides hope that quality health care will win out over the interests of a handful of politically powerful personal injury lawyers.

The people of Texas spoke, and the doctors across the State are reopening their doors. In fact, two obstetricians in the small town of Fredericksburg, TX, announced their return with an advertisement in the local newspaper that proclaimed: "We're Back!"

One of these obstetricians, Dr. David Cantu, had been working for more than 10 years as an obstetrician with no claims, but he and his partner had to quit practicing obstetrics because of the cost of insurance. Dr. Cantu's overhead was hitting 100 percent, and he had a 3-month stretch with no pay.

As soon as they stopped delivering babies, the practice saw an immediate decrease in insurance costs, but their patients were forced to travel elsewhere to have their babies delivered. This was doubly difficult for them considering the fact that 70 percent of Dr. Cantu's patients are Medicaid patients, and 40 percent were Spanish speaking.

But with proposition 12, Dr. Cantu and his partner are now able to deliver babies again. Proposition 12 has placed a \$250,000 cap on noneconomic damages in medical liability cases. When Dr. Cantu was asked, How has that helped you and your patients, he said:

Because now I come out ahead instead of paying to be an Obstetrician. Prop. 12 made the practice of Obstetrics affordable.

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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When it comes to health care, I strongly believe the proper role of Government is to protect the freedom of all of us to improve our own health and to deal with our own health care needs. We must ensure that decisions about a patient's health are not made by the Government but by individuals and families; that is, between the patient and his or her doctor.

Patients and their doctors—not lawyers, not bureaucrats—should be trusted to decide what treatment is best for them. I strongly believe when people have good choices in health care, it ultimately translates into higher quality and better care.

Dr. Cantu's story shows us that our current medical liability system is the biggest challenge we face in this regard. Our current system is wasteful and dangerous, and it too often serves the interests of greed, not justice and common sense. The overall results of our current system are sky-high costs for liability insurance, costs that have created a crisis of enormous proportions—a crisis that is threatening quality of care, diminishing access to care, and exploding the cost of care.

But there is hope. Evidence is mounting that reforms such as proposition 12 in the State of Texas are working. We can see that in real terms and not just because of advertisements of doors to doctors' offices reopening. Even though these reforms have been in place for only 1 year in Texas, early results are encouraging.

After a decrease in Texas insurance carriers from 17 to 4—that is the number of medical liability insurance companies that would actually insure a physician or a health care provider against medical liability claims—proposition 12 has created an environment where 10 different carriers have now sought reentry into the Texas market to write physician policies. The largest insurer in the State, Texas Medical Liability Trust, reduced its premiums by 12 percent. A Texas hospital association survey shows, for hospitals in our State, a 17-percent reduction across the board.

Why this response? Lawsuits against hospitals are down 70 percent from last summer's race to the courthouse, when Texas courts were flooded by personal injury lawyers with more than 10,000 medical malpractice lawsuits, shortly before voters approved proposition 12.

Let me repeat that because it is important for everyone to understand. Knowing that proposition 12 was likely to pass, personal injury trial lawyers filed more than 10,000 medical liability lawsuits shortly before the reform was to take effect in order to beat the people's mandate that health care should be more widely available and, certainly, medical liability insurance available more readily to more physicians. Why? To help doctors, to help hospitals and the corporations that own those hospitals?

Everybody knows that corporations don't practice medicine, and the only

way you can get your baby treated or yourself treated is to have a doctor who will see you. So what we are talking about is not a benefit directly to doctors or the hospitals; what we are talking about is a benefit to patients—in other words, to all of us—as a result of this commonsense reform.

The best news is that doctors such as David Cantu are responding. In Austin, 16 new obstetricians have started their practice in the last year, reversing a trend over the previous 2½ years when Austin lost 16 obstetricians due to the medical liability crisis. Driscoll Children's Hospital is recruiting close to a dozen new pediatric specialists, three neonatologists, two cardiologists, a hematologist, a general surgeon, and four other specialists, something they could not do under the earlier environment.

These successes are not limited to just the State of Texas. A recent study by the Rand Institute found that California's 1975 medical liability reform, known as MICRA, reduced defendants' liabilities by 30 percent and plaintiffs' attorneys fees by 60 percent. That was a means to an end because the result in California has been that insurance rates have actually risen at a rate of about two-thirds of what the rate has been in the rest of the Nation. These are signs that reforms such as proposition 12, or California's MICRA, have worked. Yet still we find that in the U.S. Senate today, we are unable to get a solution for families all across the Nation in States that have no such reforms in place. This is a national problem and it calls for a national solution.

I want to say a few words about our Nation's need for serious medical liability reform and the U.S. Senate's appalling refusal to address that problem with real solutions. Unfortunately, special interests continue to win out over mainstream America, and our health care system continues to bear the burden of costly and frivolous lawsuits. We see that medical care and medical liability insurance rates continue to grow unabated.

I couldn't help but notice this quote from Senator KERRY at the Democratic National Convention in his acceptance speech. He noted specifically:

Since 2000, four million people have lost their health insurance. Millions more are struggling to afford it. You know what's happening. Your premiums, your co-payments, your deductibles have all gone through the roof.

I am actually very pleased to hear this acknowledgment by the Senator from Massachusetts, recognizing the seriousness of our situation. He is right about one thing: These are real problems, and they deserve real and immediate solutions.

With all due respect, he and some of our colleagues in the Senate continue to avoid the most obvious and primary cause of escalating health care costs and the decrease in availability of medical liability insurance and the consequential lack of access to real health care—that is, runaway lawsuits.

Three times in the 108th Congress alone Republican leadership has brought meaningful medical liability reform to the Senate which, if passed, President Bush would readily sign into law. This chart shows three different bills that have been brought to the Senate floor by the majority leader: S. 11, the Patients First Act of 2003; S. 2061, the Healthy Mothers and Healthy Babies Access to Care Act; and S. 2207, the Pregnancy and Trauma Care Access Protection Act.

Over a year ago, the majority leader brought forth a comprehensive reform proposal known as S. 11. Earlier we brought forth two additional proposals which dealt more with specialty practices such as obstetricians who deliver babies and emergency room physicians, hoping that even if we were not able to get broad medical liability reform, we might be able to achieve it for those specialties that are most acutely affected and where access to health care hits the hardest.

I do not begin to claim that the legislative proposals we have advanced were the only solution to the problems. Indeed, I applaud other reforms. But it is clear, as this chart indicates, that each time we have tried to come up with a solution, we have been denied an opportunity to go forward with the debate and to have amendments, if any Senator wished to offer amendments, and to try to get good, commonsense medical liability reform that would increase access to health care.

I don't believe medical liability reform is the only problem that confronts our health care system today. I applaud many other reforms that have been proposed by the President and others, including the innovation of health savings accounts, which were part of the Medicare bill we passed about a year ago, and the use of new technology to make the practice of medicine more efficient and to reduce the likelihood of medical errors. These and other reforms do represent commonsense proposals that hold great promise, not only for improved health care but to make sure the cost of health care remains affordable and thus more available to more people.

Above all, it is clear that any of these bills would offer much-needed relief to the health care system brought to a state of crisis by politically powerful personal injury lawyers in as many as 23 States across the country. I find it sad that any special interest group—and the Senators voting according to the wishes of those groups and not the American people, a list that includes the Democratic nominees for President and Vice President—has denied us the opportunity on each of these three occasions to begin the debate, begin the legislative process, and hopefully accomplish meaningful reform and improve access to health care. But we were denied even the chance to debate and vote on the issue, even when a bipartisan majority of this body agrees that we need reform and we have the

tools to effect that reform within our reach. Their choice to deny us that opportunity was not ours; it was theirs. To this day, those who obstruct meaningful medical liability reform leave the American people with the sad reality of the status quo, a broken civil justice system and little hope for a national solution.

While the problem persists in all aspects of our health care system, the crisis is particularly acute among specialty doctors—for example, neurosurgeons, brain and spinal surgeons, emergency room physicians, and, notably, obstetricians and gynecologists, the doctors who actually care for women who are pregnant and who deliver their babies. A handful of powerfully connected personal injury lawyers is seriously jeopardizing patient care for women and their newborns. I and others find that completely unacceptable.

Across the country liability insurance for obstetrician/gynecologists has become prohibitively expensive. Premiums have tripled and quadrupled, leaving OB/GYNs without the ability to get liability insurance at all as insurance companies fold or stop insuring doctors.

This last week, the Washington Post wrote an article on a malpractice insurer, known as NCRIC, right here in the District of Columbia, which is “feeling the squeeze,” losing over \$4 million in 2003 alone.

This chart shows that 23 States are on red alert—in a medical liability crisis—while just 3, including Texas, are in crisis pending effect of reform. Others noted by the hash marks on the chart are those where the crisis is still brewing.

These skyrocketing medical malpractice premiums literally are driving physicians out of business and leaving Americans without access to quality health care. Between 2002 and 2003, rates rose as much as 40 percent in some States, with the impact hitting specialty doctors such as obstetricians/gynecologists the hardest.

When an OB/GYN cannot find or afford medical liability insurance, they are forced to stop delivering babies, forced to curtail surgical services, or close their doors altogether. Now more than one in seven across the Nation is simply leaving the profession and walking away.

For example, in my home State of Texas, the entire obstetrics unit at Spring Branch Medical Center in Houston was forced to close just prior to an expected 2003 increase of 67 percent in the hospital's medical liability premiums.

Today, because the effects of proposition 12 have not been fully realized, out of 254 counties in Texas—one of the States in crisis pending effect of the reforms—more than half of the counties in Texas simply do not have available a single doctor who specializes in delivering babies. In many cases, doctors simply chose to stop serving certain

patients to avoid costly litigation; or even if they were not involved in litigation, they were still forced to pay ultra-high medical liability premiums, making it simply impossible to make ends meet.

One rural obstetrics/gynecologist who serves mostly Medicaid, or poor patients, was forced to stop seeing high-risk patients altogether because his insurance premiums had increased 300 percent.

The effects are felt almost entirely by the poorer members of our society who depend, of course, on Medicaid to help them with their health care premiums.

Perhaps most disconcerting of all, however, is the trend of doctors engaging in defensive medical practice. When we ask why is the cost of health care going up so dramatically and why are health care premiums paid by employers or by self-employed persons going up so dramatically, it is in part because of the effect of defensive medicine—physicians who provide tests and services, not because they think it is medically indicated but because they simply want to defend themselves against a potential lawsuit.

According to the Department of Health and Human Services, a majority of doctors say they recommend invasive procedures and painful tests they consider unnecessary in medical terms in hopes of avoiding litigation. That is the point we have reached.

The most basic principles of justice require that we embrace national reform as soon as possible, striving to protect access both to the courts and to our hospitals and to physicians. As a matter of principle, those who are wrongly injured deserve their day in court; there is no question about that. We all agree. If a doctor is responsible or negligent, he or she should be held fully accountable. But the sad fact is that the current system does not foster accountability. Instead, it has nearly destroyed any hope for quality and affordable health care in America. The time for that to change is now and we must change it.

It is time for Congress to act and to provide a national solution so all Americans can benefit from medical liability reform, so all Americans can open their newspapers and see an advertisement from their neighborhood doctor, who may have once been forced out of his practice now happily, proclaiming: We are back.

I yield the floor.

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. FRIST. Mr. President, I wish to make some comments on intelligence reform, an issue that is a real focus for the Senate, with activities both on the floor as well as off the floor and most of it in committee and task forces right now.

Before doing so, I thank my colleague from Texas, who so carefully and deliberately and comprehensively laid out a huge problem that, as he

said, affects access to health care now. As he described it, obstetricians and gynecologists are leaving the practice of delivering babies and getting out of taking care of women who need it because they simply cannot afford it any longer. Trauma surgeons and centers are stopping doing surgery, not because they want to, but they cannot afford to and still provide for their family.

The driver for those OB/GYNs, the trauma centers, neurosurgeons, and orthopedic surgeons is the liability system that is out of control. It used to be that people would talk about it and it didn't have much traction with the American people because they would say those doctors make so much money and they can take care of it. But when you have neurosurgeons paying \$400,000 a year just for liability insurance, you simply cannot keep delivering care. If it is \$100,000 or \$200,000, you can pass it on to the patients. But remember, the skyrocketing premiums are costing the American people—you, the people listening to me, who are having to pay more for health care—because it drives the cost up.

I very much appreciate him coming to the floor and addressing that issue. Health care costs right now are increasing each and every year. We all know that and it is our obligation to address that. It is about 15 percent of our gross domestic product right now. Whether that is too much or too little, the point is, it is going up, and one of the big drivers of that is the medical liability cost.

Americans deserve affordable health care, reliable health care, accessible health care, and good quality health care. We are getting to a point where we simply cannot afford it; thus, as we look to the future, and whether it is in individual Senate races or the Presidential race, I encourage the American people to ask these questions: Who is addressing the root causes of these escalating costs in health care? Is it Democrats or Republicans? Is it the nominee or the incumbent? Is it President Bush or nominee Kerry? Who is addressing the root causes of driving these costs sky high and out of everybody's control, when ultimately the American taxpayer pays it, and your premium is going to go up, whether or not you are involved in a lawsuit, because that cost is passed on to you.

As my colleague pointed out on the floor, on three occasions, we have addressed the root cause—these frivolous lawsuits, the personal injury lawyers, who are putting money in their pockets instead of the pockets of the victims who may have been hurt; or the predatory personal injury lawyers—not all of them but the ones filing frivolous lawsuits, in order to hit that litigation lottery and line their pocketbooks. We have tried to do this three times unsuccessfully basically because of the Democrats—not all because one voted with us. They said they were not going to discuss it on the floor of the Senate. So I think it is an issue that we must

address, and I appreciate our distinguished colleague bringing it to the floor. It is an important issue that we have to address on this floor and I think will play out in races across the country. Who is for reasonable, commonsense medical liability reform which allows obstetricians to keep delivering babies, trauma centers to stay open, and allows doctors to do what they want to do, and that is to practice medicine and take care of patients, instead of driving them away. It is as simple as that.

We are going to try to get it before the Senate, probably not in the next 18 days we have left in our legislative session, but we will bring it back again and again until we are successful.

I should mention as an aside as well, in the Presidential race, it is important, as we look at who is addressing the root causes in terms of a vision for health care, we do need to take a look at the health care plans.

The American Enterprise Institute released today a very good paper—I am sure there will be other papers—that looked at the Kerry health care plan and said it is going to cost \$1.5 trillion. That is twice what the Kerry campaign has said.

Mr. President, \$1.5 trillion is huge. The only way it can be paid for, obviously, is by increasing taxes on everybody—everybody. I encourage people to look at that document.

#### INTELLIGENCE REFORM

Mr. FRIST. Mr. President, I do want to bring people up to date—and I will be brief—on where we are with the Senate intelligence reform initiatives in light of the 9/11 Commission. Over the next several days, we will have a very busy week. It is cut a little bit short by the Jewish holidays. I believe our central focus in this body, given the fact we have so few legislative days, must be on the security of the American people, and that means the bill that is currently on the floor that we are turning to and will be voting on one of the amendments at 5:30 p.m. today, the Homeland Security appropriations bill.

It says “Homeland Security” appropriations. We have had good debate. We all hope to pass that bill late tomorrow night or Wednesday morning for sure.

Second, we need to focus on reforming our intelligence community, something people do understand—broadly the American people understand—that is reflected in the 9/11 Commission recommendations, the update of that report, the discussion of that report, and we have responded aggressively in terms of hearings, recognizing that reform should be done now, not knee-jerk but deliberate reform, and begin it in a way that will have an impact to make our intelligence better, to make our intelligence sharing among our various entities better, that makes our oversight better.

Last week, the leadership on both sides of the aisle, on both sides of the

Capitol, met with the President of the United States, who presented his plan for reorganizing the intelligence community. It was a good meeting. It was a productive meeting. There was a good discussion by the participants. The general consensus was we need to respond quickly but also very responsibly, and that really is our charge.

We are responding to the reform we all know needs to occur, but it was spelled out by the 9/11 Commission. It does not mean we should take every recommendation and do exactly what they said, but it means we need to look at those recommendations, study them, get new information, make them even more current, and then act on many of those recommendations.

The President mentioned that they in the administration have addressed 36 of the recommendations. There are really two recommendations that apply to reorganization of this body, 39 to the executive branch, and the administration has addressed 36 of those 39 recommendations.

Before we recessed in July, Senator DASCHLE and I announced that the Governmental Affairs Committee would be the vehicle, that they would have the responsibility for leading the reorganization of the executive branch, the branch outside the legislative branch.

For our internal reorganization, we announced a task force that is led by the leadership, represented by the majority whip, Senator MCCONNELL, and the minority whip, Senator REID, that would address the recommendations of Senate oversight.

The McConnell-Reid task force is meeting to discuss the whole range of options that have been put on the table, several of which were put on the table by the 9/11 Commission. Indeed, there are a lot more options that are available to be discussed and debated, and then to make a proposal as to what, based on all of this input, would be most appropriate, most responsible for this body to do, to accomplish that Senate oversight of intelligence and homeland security.

It is a bipartisan effort. When we talk about safety and security of the American people, politics falls aside pretty quickly. Senator DASCHLE and the Democratic leadership and the leadership on our side are working closely together to address the challenges before us. We have tapped into the expertise of the Congressional Research Service and other outside experts in a search for additional or other ways and means to improve Senate oversight.

The McConnell-Reid task force will meet several more times over the coming weeks. They will be assessing the 9/11 Commission's proposals, as well as other proposals. Our goal is to get a resolution to the floor before the Senate adjourns on October 8.

Meanwhile, the arm that I mentioned, the Governmental Affairs Committee arm, led by Senators COLLINS

and LIEBERMAN, continues to make steady progress. Last week, the Governmental Affairs Committee held a briefing with Robert Mueller, who is Director of the FBI, and John McLaughlin, who is Acting Director of the CIA. This morning they held another hearing with Secretary of State Colin Powell and Secretary of Homeland Security Tom Ridge.

I mention all these hearings so my colleagues and the American people know we are aggressively addressing these issues. We can expect more hearings to be held this week and in the weeks ahead, culminating in a draft bill that will be marked up that week of September 20. The bill will address the 9/11 Commission's key recommendations dealing with the establishment of a national intelligence director—we are using that little acronym NID—as well as the creation of the National Counterterrorism Center, as well as the proposals of the reorganization of the executive branch.

The committee's bill will reflect the views and the input of a number of Senate committees and Members of Congress, as well as proposals that are put forth by the President and the White House.

I am confident that the Governmental Affairs Committee product will serve as a strong, comprehensive, and serious bill that will be the baseline for our deliberations on the floor of the Senate on September 27. There will be a continuation of hearings. The main action on the Senate floor will begin soon.

I do want to show my colleagues and the American people that the Senate is moving deliberately, quickly, and in this bipartisan manner to address these national security needs.

As I said at the outset, our highest responsibility is to the safety, the security of the American people. We are working hard to meet that responsibility to move America forward, and I am confident we will get that job done. Over the course of this week, we will continue with the appropriations bills and, as I mentioned in my opening statement a few minutes ago, we are working out an agreement to address the next appropriations bill. Hopefully, we will be able to announce that either later today or tomorrow.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. BURNS). The Senator from Florida.

#### EMERGENCY ASSISTANCE FOR FEMA

Mr. NELSON of Florida. Mr. President, before the majority leader leaves, I spoke with the chairman of the Appropriations Committee as he was leaving the floor and inquired as to what he is anticipating. He told me that he is anticipating there will be a House bill that would be sent sometime today on emergency assistance for FEMA and, I assume, other agencies as well.

If that is the case, then that is new information, and we can proceed on